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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER  
PRIVACY USER PROFILE LITIGATION,

This document relates to:  
  
ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**FACEBOOK, INC.'S STATEMENT IN  
SUPPORT OF PLAINTIFFS'  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER ANOTHER  
PARTY'S MATERIALS SHOULD BE  
SEALED**

Pursuant to Civil Local Rules 7-11 and 79-5, Facebook, Inc. (“Facebook”) hereby submits this Statement in Support of Plaintiffs’ Administrative Motion to Consider Whether Another Party’s Materials Should Be Sealed (Dkt. 1070) (“Administrative Motion”). For the reasons explained below, there is good cause to seal permanently this information and Facebook’s request is narrowly tailored under the circumstances.

## **I. Background**

On October 17, 2022, this Court ordered Plaintiffs to file full transcripts of all depositions of Simon Cross, David Miller, and Michael Fahey, noting that portions of the Cross deposition were not included in Plaintiffs’ filing on August 24, 2022. Dkt. 1066. On October 28, 2022, Plaintiffs filed these transcripts under seal and in redacted form. Dkts. 1070, 1071. The Cross deposition transcripts, filed by Plaintiffs at Dkts. 1070-3–1070-7, are subject to a prior motion to seal, where Facebook submitted a statement and declaration in support of sealing portions of the transcripts, along with redacted and sealed copies of the transcripts. *See* Dkts. 1038, 1038-1, 1038-2, 1038-8, 1038-16, 1046, 1046-1, and 1046-2. Facebook hereby submits its statement and declaration in support of sealing portions of these transcripts, and also incorporates by reference its prior statement and declaration in support of sealing portions of the Cross transcript. *Id.*

## **II. The Good Cause Standard Applies Because the Materials Are Unrelated to the Merits**

Courts seal information in non-dispositive motions so long as there is good cause to do so because public disclosure of the information would cause harm or prejudice, and the request is narrowly tailored. *Doe v. Walmart, Inc.*, 2019 WL 636362, at \*1–2 (N.D. Cal. Feb. 11, 2019). Here, the portions of the deposition transcripts that Facebook seeks to seal are related to the discovery record, not the merits of this action, so the good cause standard applies.

## **III. There Is Good Cause for Facebook’s Proposed Redactions and Sealing**

Facebook asks the Court to permanently seal the following categories of information:

### ***(i) Confidential information that Facebook has previously asked the Court to seal.***

Facebook asks the Court to seal limited portions of the following documents, for which Facebook previously requested that the Court find good cause to seal, upon which the Court has not yet ruled:

1. Ex. 105 (Combined Cross Deposition Transcript) (Dkts. 1070-3–1070-7). *See* Dkt. 1038-

8 (proposed redactions); Dkt. 1038 (Facebook’s explanation for the proposed redactions), Dkt. 1046-1 (proposed order listing specific redactions); (Dkt. 1046-2 (declaration listing specific redactions)).

**(ii) Confidential information regarding Facebook’s proprietary video technology, data systems, and data storage and processing practices.** As set forth in the Stein Declaration and Proposed Order, Facebook asks the Court to seal confidential information regarding details about video technology and the data systems that house specific data and how Facebook stores, tracks, preserves, deletes, and processes data. This information involves key components of Facebook’s business that set it apart and ahead of its competitors and reveals confidential technical information about its video technology, data systems, and proprietary methods for storing and processing data. Stein Decl. ¶ 5. If this information were publicly disclosed, competitors could use it to improve their own methods for hosting video content or managing high volumes of user data or for tracking user data across data systems. *Id.* Courts routinely seal commercially sensitive information that “competitors would be able to take advantage of” and use unfairly if disclosed. *See, e.g., Asetek Danmark A/S v. CMI USA, Inc.*, 2015 WL 4511036, at \*2 (N.D. Cal. July 23, 2015). Additionally, hackers and other bad actors could use this information to better understand Facebook’s data systems and target specific repositories of data, potentially harming both Facebook and its users. Stein Decl. ¶ 5. The Court has previously found good cause to seal this type of information. *See, e.g.,* Dkt. 813 at 26–29 (requesting sealing data system names); Dkt. 844 (granting motion to seal).

**(iii) Confidential and competitively sensitive information regarding Facebook’s business programs, strategies, decisions, and partners.** Facebook asks the Court to seal confidential information, set forth in the Stein Declaration and Proposed Order, regarding Facebook’s business programs, strategies, decisions, and partners. Courts routinely seal documents that would reveal “confidential and competitively-sensitive information” and “confidential business strategies,” as well as other “proprietary” information, that competitors could use to a party’s competitive disadvantage. *See, e.g., In re Lidoderm Antitrust Litig.*, 2016 WL 4191612, at \* 26–27 (N.D. Cal. Aug. 9, 2016); *In re Qualcomm Litig.*, 2017 WL 5176922, at \*2 (S.D. Cal. Nov. 8, 2017). Courts

also regularly seal information that would identify confidential business relationships or reveal the terms of such relationships. *See, e.g., Obesity Rsch. Inst., LLC v. Fiber Rsch. Int'l, LLC*, 2018 WL 3642177, at \*5 (S.D. Cal. Aug. 1, 2019). For these reasons, this Court has previously sealed similar information. *See, e.g.,* Dkt. 813-1 at 3440 (requesting sealing of the name of a business partner); Dkt. 844 (granting motion to seal); Dkt. 550 at 2–3; Dkt. 550-1 at 1 (requesting sealing of information that would give competitors insight into Facebook’s strategy); Dkt. 638 (granting motion to seal); Dkt. 812 at 3–4 (explaining harm to Facebook from public disclosure of the details of Facebook’s targeted advertising); Dkt. 844 (granting motion to seal such information). Public disclosure of this information could allow Facebook’s competitors to copy its strategies, or use the ideas developed by Facebook at its own expense to Facebook’s competitive disadvantage. Stein Decl. ¶ 6. Public disclosure also could harm Facebook’s relationships with its business partners by disclosing their identities and confidential negotiations with Facebook, and undercut Facebook’s ability to negotiate with these entities’ competitors. *Id.*

***(iv) Confidential information regarding Facebook’s privacy and platform policy enforcement practices.*** Facebook asks the Court to seal confidential information, set forth in the Stein Declaration and Proposed Order, regarding Facebook’s privacy and platform enforcement practices. Disclosure of information about Facebook’s decision-making process for evaluating apps and developers that may be violating its policies would reveal confidential details of Facebook’s internal business operations. Stein Decl. ¶ 7. If this information were revealed, bad actors could use it to attempt to circumvent and evade Facebook’s enforcement strategies, potentially harming both Facebook and its users. *Id.* The Court has previously sealed similar information for the same reasons. *See, e.g.,* Dkt. 812 (requesting sealing of similar information); Dkt. 844 (granting motion to seal).

#### **IV. The Proposed Redactions Are Narrowly Tailored**

Facebook’s proposed redactions are narrowly tailored because the redactions are limited to the narrow and limited categories of confidential and proprietary information set forth above. *See Dunbar v. Google, Inc.*, 2013 WL 12216625, at \*1 (N.D. Cal. Aug. 18, 2014) (granting sealing requests that were “narrowly tailored to protect . . . proprietary information”).

1 For these reasons, Facebook respectfully requests that the Court permanently seal the  
2 materials attached to Plaintiffs' Administrative Motion as set forth herein and as fully set forth in  
3 the Proposed Order.  
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1 Dated: November 4, 2022

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